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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLETO SIQUEIROS,
Petitioner,

v.

KEN CLARK, Warden,
Respondent.

No. C 08-2939 MMC (PR)

**ORDER GRANTING MOTION TO
STAY PETITION; DIRECTING
CLERK TO ADMINISTRATIVELY
CLOSE FILE**

(Docket No. 13)

On June 12, 2008, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent has filed an answer to the petition, and petitioner has filed a traverse. It is undisputed that all of the claims in the petition are exhausted.

Now pending before the Court is petitioner's motion, filed on the same date petitioner filed his traverse, to stay the petition. Specifically, petitioner asserts, and has attached to his motion exhibits in support of his assertions, that he has recently been informed by the Office of the Public Defender of Santa Clara County that, in view of the decision of the California Court of Appeal in People v. Uribe, 162 Cal. App. 4th 1457 (2008), petitioner's case has been referred to the Independent Defense Counsel Office for a determination whether a writ of habeas corpus should be pursued on petitioner's behalf. Specifically, petitioner was convicted of rape and the commission of lewd or lascivious acts on a child under the age of

1 fourteen, and Uribe held that because a videotape of a victim's Sexual Assault Response
2 Team (SART) examination was favorable defense evidence under Brady v. Maryland, 373
3 U.S. 83 (1963), the prosecution's failure to produce such evidence constituted a Brady
4 violation. Uribe, 162 Cal. App. 4th at 1463.

5 District courts have inherent authority to issue stays where a stay would be a proper
6 exercise of discretion. Rhines v. Webber, 544 U.S. 269, 276 (2005). In particular, a district
7 court may stay a mixed habeas petition, i.e., a petition containing both exhausted and
8 unexhausted claims, to allow the petitioner to exhaust state court remedies as to those claims
9 that have not yet been presented to the state's highest court. Id. at 277-78. Under such
10 circumstances, a stay and abeyance "is only appropriate when the district court determines
11 there was good cause for the petitioner's failure to exhaust his claims first in state court," the
12 claims are not meritless, and there are no intentionally dilatory litigation tactics by the
13 petitioner. Additionally, in King v. Ryan, 564 F.3d 1133, 1139, 1140 (9th Cir. 2009), the
14 Ninth Circuit clarified that a district court may, without a showing of good cause, stay a
15 fully-exhausted petition while the petitioner returns to state court to exhaust new claims.
16 Once the claims are exhausted, however, the petitioner must amend his petition, within the
17 one-year limitations period set forth at 28 U.S.C. § 2244(d)(1), to add the newly-exhausted
18 claims. Id. at 1140-41.

19 Here, petitioner's request for a stay does not fall directly under the holdings of either
20 Rhines or King. Rhines does not apply because the petition is not a mixed petition. King
21 also does not apply, because, even though the petition is fully exhausted, petitioner has not
22 said that he is returning to state court to exhaust a new claim based on Uribe. In the interest,
23 however, of providing the state courts with the opportunity to rule on any such claim prior to
24 this Court's ruling on the merits of the instant petition, the Court will exercise its discretion
25 to grant petitioner a sixty-day stay of the instant proceedings to inform the Court whether
26 petitioner will return to state court to exhaust a newly-discovered Uribe claim. If petitioner
27 informs the Court that he intends to do so, the stay will be continued until such time
28 petitioner's Uribe claim has been exhausted in state court. Alternatively, if petitioner

1 informs the Court either that he does not intend to return to state court to exhaust a Uribe
2 claim, or fails to respond to this order within sixty days, the stay will be lifted and the
3 petition will be deemed ready for a decision on the merits.

4 For the foregoing reasons, and good cause appearing, petitioner's request for a stay is
5 hereby GRANTED, and the above-titled action is hereby STAYED for sixty days.

6 The Clerk shall ADMINISTRATIVELY CLOSE the file pending the stay of this action.

7 This order terminates Docket No. 13.

8 IT IS SO ORDERED.

9 DATED: July 8, 2010

10 for /s/ Susan Illston
11 MAXINE M. CHESNEY
12 United States District Judge
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